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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 TONY DALE PENWELL,

11 Plaintiff,

12 v.

13 SERGEANT JUTILLA, et al.,

14 Defendants.

CASE NO. C05-0831JLR

ORDER ADOPTING REPORT  
AND RECOMMENDATION

15 **I. INTRODUCTION**

16 This matter comes before the court on the Report and Recommendation of United  
17 States Magistrate Judge James P. Donohue (R&R (Dkt. # 62)), and Plaintiff Tony Dale  
18 Penwell's objections thereto (Objections (Dkt. # 63)). Having carefully reviewed the  
19 foregoing, along with all other relevant documents and the governing law, the court  
20 ADOPTS the Report and Recommendation (Dkt. # 62) granting Defendants' motions for  
21 summary judgment (Dkt. # 48), and DISMISSES Mr. Penwell's second amended  
22 complaint with prejudice.

## II. STANDARD OF REVIEW

A district court has jurisdiction to review a Magistrate Judge's report and recommendation on dispositive matters. *See* Fed. R. Civ. P. 72(b). "The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to." *Id.* "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). The court reviews de novo those portions of the report and recommendation to which specific written objection is made. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Because Mr. Penwell is proceeding *pro se*, this court must interpret his complaint and objections liberally. *See Bernhardt v. Los Angeles Cnty.*, 339 F.3d 920, 925 (9th Cir. 2003).

## III. DISCUSSION

Mr. Penwell brings this action under 42 U.S.C. § 1983 alleging that Defendants violated his rights during his arrest and booking on criminal charges in November 2004. (*See* 2d Am. Compl. (Dkt. # 14).) Other than appearing confused by the Magistrate Judge's use of the term "second amended complaint," Mr. Penwell's objections to the Report and Recommendation repeat the arguments he made in his prior pleadings. Based on an independent review of the record, the court agrees with the analysis and conclusions of Magistrate Judge Donohue that Mr. Penwell has failed to allege any cognizable constitutional violations. In addition, the court agrees with Defendants that they are entitled to qualified immunity. *See Saucier v. Katz*, 533 U.S. 194, 200 (2001).

1 Mr. Penwell's objections fail raise any issues that were not addressed by  
2 Magistrate Judge Donohue's Report and Recommendation. Moreover, the court has  
3 thoroughly examined the record before it and finds the Magistrate Judge's reasoning  
4 persuasive in light of that record. Mr. Penwell essentially reargues the arguments he  
5 made to Magistrate Judge Donohue, and the court independently rejects them for the  
6 same reasons as Magistrate Judge Donohue and also because Defendants are entitled to  
7 qualified immunity.

#### 8 IV. CONCLUSION

9 For the foregoing reasons, the court hereby ORDERS as follows:

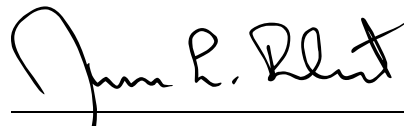
10 (1) The court ADOPTS the Report and Recommendation (Dkt. # 62) in its  
11 entirety;

12 (2) The court GRANTS Defendants' motion for summary judgment (Dkt. # 48);

13 (3) The court DISMISSES Mr. Penwell's second amended complaint (Dkt. # 14)  
14 with prejudice; and

15 (4) The court DIRECTS the Clerk to send copies of this Order to Mr. Penwell,  
16 Defendants' counsel, and Magistrate Judge Donohue.

17 Dated this 9th day of December, 2014.

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20 JAMES L. ROBART  
21 United States District Judge  
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